No. 15,148

In the

United States Court of Appeals

For the Ninth Circuit

SWITCHMEN'S UNION OF NORTH AMERICA, GENERAL ADJUSTMENT COMMITTEE—SOUTHERN PACIFIC COMPANY, SWITCHMEN'S UNION OF NORTH AMERICA; NEIL T. SPEIRS, as International Vice President, Switchmen's Union of North America, and JOHN R. BURGE as General Chairman and as Acting General Chairman, Switchmen's Union of North America,

Appellants,

vs.

SOUTHERN PACIFIC COMPANY, a corporation, and BROTHERHOOD OF RAILROAD TRAINMEN, et al.,

Appellees.

Brief for Appellee Southern Pacific Company

BURTON MASON
W. A. GREGORY
65 Market Street
San Francisco 5, California

Attorneys for Appellee,
Southern Pacific Company

PARKER PRINTING COMPANY, 180 FIRST STREET, SAN FRANCISCO 5

TABLE OF CONTENTS

	Page
Appellee's Statement of the Case	1
Argument	3

AUTHORITIES

	Pages
Railway Labor Act:	
Section 2, Fourth	5
Section 2, Fifth	5
Section 2, Eleventh (b)	3, 4, 5
Section 2, Eleventh (c)	4, 5
Section 3, First (h)	2
Report of the Committee on Labor and Public Welfare in Senate Report No. 2252 (81st Cong., 2d Sess. 4319 (1950))	5
2 CCH Lab. L. Rep., para. 4600, page 4784	6
28 U.S.C.:	
Section 1291	3
Section 1332	1
Section 1337	7
Section 2201	1
45 U.S.C.:	
Section 152, Eleventh	2
Section 152, Eleventh (b)	4, 5
Section 152, Eleventh (c)	4, 5

No. 15,148

In the

United States Court of Appeals

For the Ninth Circuit

SWITCHMEN'S UNION OF NORTH AMERICA, GENERAL ADJUSTMENT COMMITTEE—SOUTHERN PACIFIC COMPANY, SWITCHMEN'S UNION OF NORTH AMERICA; NEIL T. SPEIRS, as International Vice President, Switchmen's Union of North America, and JOHN R. BURGE as General Chairman and as Acting General Chairman, Switchmen's Union of North America,

Appellants,

vs.

SOUTHERN PACIFIC COMPANY, a corporation, and BROTHERHOOD OF RAILROAD TRAINMEN, et al.,

Appellees.

Brief for Appellee Southern Pacific Company

APPELLEE'S STATEMENT OF THE CASE

This is a suit for a declaratory judgment brought pursuant to 28 U.S.C. 1332, 1337 and 2201, for the purpose of

determining a question in actual controversy between appellee Southern Pacific Company (hereinafter referred to as the "Carrier") and the appellant, Switchmen's Union of North America (hereinafter referred to as S.U.N.A.), appellee Brotherhood of Railroad Trainmen (hereinafter referred to as B.R.T.) and others, to-wit, the question of the validity under the Railway Labor Act (45 U.S.C. 152, Eleventh) of two written collective bargaining agreements (identical, except that they apply to two separate portions of the Carrier's system) which became effective August 1, 1955. (R. 9-16) These agreements, which are now and at all times material have been in effect between the Carrier and the B.R.T., provide in effect that the Carrier shall deduct sums for periodic dues, initiation fees, assessments and insurance (not including fines and penalties), payable to the B.R.T. by members thereof from wages earned in the service of the Carrier as trainmen, and as well from "wages earned in any of the services or capacities covered in Section 3, First (h) of the Railway Labor Act defining the jurisdictional scope of the First Division, National Railroad Adjustment Board, upon the written and unrevoked authorization of a member * * *" This arrangement is commonly (and hereinafter) referred to as "Dues Deduction Agreement." (R. 9-16) The Carrier has scrupulously complied with the terms of the Dues Deduction Agreements (R. 7, 36). Appellant S.U.N.A. on September 8 and 28, 1955, demanded that the Carrier cease making such deductions from the pay of members of the B.R.T. employed by the Carrier in the craft or class of yardmen (R.7-8), which craft is represented by S.U.N.A. in accordance with the Railway Labor Act (R. 4, 17). On November 14, 1955, the Carrier filed complaint for declaratory relief in the U.S.

District Court (R. 3-16). Appellant S.U.N.A. and appellee B.R.T. filed answer and counterclaim seeking declaratory relief (R. 16-23; 24-28). The parties moved for summary judgment (R. 29-30; 30-34). On March 29, 1956, United States District Judge Michael J. Roche granted judgment in favor of appellees and declared "that the Dues Deduction Agreements", subject of this action, are wholly valid and enforceable, and in accordance with the terms of the Railway Labor Act (R. 46-47). The S.U.N.A. filed Notice of Appeal on April 16, 1956 (R. 48). This Court has jurisdiction of this appeal by virtue of 28 U.S.C. 1291.

In this state of the case the essential question now before this Court is whether the District Court erred in granting judgment in favor of appellees on the basis of the record setting forth the above agreed facts. More specifically, the question presented by this appeal is as follows:

> Are the Dues Deduction Agreements between the Carrier and the B.R.T. lawful and valid notwithstanding that certain members of the B.R.T. who are in the Carrier's employ may be working as yardmen, and as such are subject to the collective bargaining agreement between the Carrier and S.U.N.A. as the collective bargaining representative, under the Railway Labor Act, of the craft of yardmen employed by the Carrier?

ARGUMENT

The facts in this case are not in dispute (R. 29, 32). The sole question before this Court is the legality of the challenged Dues Deduction Agreements between the Carrier and the B.R.T. as applied to B.R.T. members employed as yardmen, which classification is represented by the S.U.N.A.

It is the position of the Carrier that Section 2, Eleventh

(b) of the Railway Labor Act (45 U.S.C. 152, Eleventh (b)), which authorizes the making of dues deduction agreements generally, must be read in conjunction with the next following subsection of Section 2, Eleventh. The latter (Section 2, Eleventh (c) (45 U.S.C. 152, Eleventh (c)) specifically provides that the requirement of membership in a labor organization, under a union shop agreement made pursuant to the act, shall be satisfied, as to employees in engine, train, *yard,* or hostling service, if the employee holds or acquires membership in any one of the labor organizations, national in scope, which are organized in accordance with the act and admit to membership employees of a craft or class in any of the said four services. As applied to the case at bar, Subsection (c) means that the requirements of the union shop agreement between the Carrier and S.U.N.A., covering yardmen employed by the Carrier, can be satisfied, as to any individual yardman, if he maintains membership in B.R.T. In its opinion dated March 5, 1956, the District Court declared in part as follows (R. 39):

> "The record in this case reveals that in the railroad industry men whose principal employment is in one craft, for example, the craft of brakemen, are occasionally, and sometimes frequently employed as members of another craft, for example, as conductors or as yardmen. In view of the interchangeable nature of the employment, it would seem that the only reasonable and workable interpretation of the statutes herein considered is that the union to which said man belongs shall have the right to enter a dues deduction agreement with the carrier, a right which is provided for in all of the contracts shown to the Court, including the contract of the Switchmen's Union itself."

In its Findings of Fact dated March 29, 1956, the District Court pointed out (R. 44):

"4. The Switchmen's Union is itself a party to an identical agreement with plaintiff dated August 8, 1955, effective September 1, 1955. A similar agreement is likewise in effect between plaintiff and its conductors represented by the Order of Railway Conductors and Brakemen."

The position of the S.U.N.A. is, however, that when such an individual is working as yardman or a conductor, he cannot be party to a dues deduction agreement in favor of the union (B.R.T.) of which he is a member, and which holds the representation of the craft (brakemen) in which he regularly works. It is evident that if this view were upheld, the dues deduction provision, instead of affording a measure of protection for an individual employee against the possibility of being in default in his dues and therefore subject to discharge, would engender a false sense of security and might lead to the employee's being in default although he had considered that he was fully protected.

It is contended by the S.U.N.A. that these Dues Deduction Agreements as above applied are prohibited by Section 2, Fourth and Fifth of the Railway Labor Act (45 U.S.C. 152, Fourth and Fifth), notwithstanding the adoption of Section 2, Eleventh (b), (c) and (d) of the Railway Labor Act in 1951 (45 U.S.C. 152, Eleventh (b), (c) and (d)). The said 1951 amendments fully support the validity of these Dues Deduction Agreements. Furthermore, the legislative purpose behind Section 2, Fourth and Fifth was to prevent carriers from interfering with or questioning the right of their employees to organize and bargain collectively. It was directed at such devices as company unions, contributions to union organizations and other such abuses. See Report of the Committee on Labor and Public Welfare in Senate Report No. 2252 (81st Cong., 2d Sess. 4319 (1950)), set forth in part in R. 39-41. This report shows that the

railway organizations have recognized that such abuses have practically disappeared and have sought the right to bargain collectively with regard to union-shop agreements and check-off (another term used for Dues Deduction Agreements), which right is possessed by industry generally (R. 41).

The District Court's opinion adds (R. 41):

> "In conclusion, the Railway Labor Act, Section 2, Eleventh, Subdivision (c) (45 U.S.C.A. Sec. 152, Eleventh (c)) provides that no agreements for deductions from an employee's wages or dues, initiation fees, or assessments are to be made by the carrier payable 'to any labor organization other than that in which he holds membership.' This provision, considered in the light of the over-all legislative intent to give the railroad unions the rights possessed by unions in industry generally, indicates that the employee is not tied as far as payment of dues is concerned to the union holding the contract with the carrier, but rather to the union in which he holds membership."

This conclusion is supported in 2 CCH Labor Law Rep., para. 4600, at page 4784, in the following quotation:

> "Employees in occupations falling within the jurisdiction of the First Division of the National Railroad Adjustment Board (engine, train, yard and hostling service) are not required to belong to a union representing a craft or class in which they may be employed if they are members of another union 'national in scope' and admitting members employed in another craft or class. *In such instances, check-off may be granted only in favor of the union in which employees hold membership.*" (Emphasis supplied.)

The Carrier entered into these collective bargaining agreements relating to dues deductions with the conviction

that they were lawful and valid. It is submitted that the judgment of the District Court sustaining this action should be affirmed.

Respectfully submitted,

Burton Mason
W. A. Gregory

Attorneys for Appellee
Southern Pacific Company

Dated at San Francisco, California,
September 21, 1956.